



# NASA Procedural Requirements

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## Reasonable Accommodations Procedures

**Responsible Office: Office of Diversity and Equal Opportunity**

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## Preface

### P.1 Purpose

- a. This directive establishes responsibilities and requirements for all NASA employees, including managers and supervisors, who request, receive, coordinate, review, process, and decide requests for reasonable accommodation at NASA Headquarters (HQ) and NASA Centers, including Component Facilities. <sup>1</sup>
- b. This NPR is intended to assist NASA in fulfilling its obligation to ensure that individuals with disabilities who are qualified, that is, able to perform the essential functions of the job, with or without reasonable accommodation, and who request reasonable accommodation, receive a prompt and proper response. <sup>2</sup>
- c. Further, this NPR establishes criteria for collecting and annually reporting data on the numbers and types of reasonable accommodation requests received and processed at NASA Headquarters and NASA Centers, including Component Facilities.

### P.2 Applicability

- a. This NPR is applicable to NASA HQ and NASA Centers, including Component Facilities and Technical and Service Support Centers.
- b. In this directive, all mandatory actions (i.e., requirements) are denoted by statements containing the term "shall." The terms: "may" or "can" denote discretionary privilege or permission, "should" denotes a good practice and is recommended, but is not required, "will" denotes expected outcome, and "are/is" denotes descriptive material.
- c. In this directive, all document citations are assumed to be the latest version, unless otherwise noted.

### P.3 Authority

- a. The Rehabilitation Act of 1973, Sections 501, 504, and 508 of, as amended, 29 U.S.C. §§ 791, 794, 794d.
- b. Requiring Federal Agencies To Establish Procedures To Facilitate the Provision of Reasonable Accommodation, E.O. 13164, 3 CFR § 286 (2000).
- c. NPD 3713.8, Provision of Reasonable Accommodation for Individuals With Disabilities.

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<sup>1</sup> This NPR is not intended to cover those situations where an employee has a transitory and minor medical condition that does not constitute a disability (see Appendix A, "Individual With a Disability" definition).

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<sup>2</sup> See Appendix A for definitions of key terminology, such as reasonable accommodation, essential functions, qualified, and individual with a disability.

### P.4 Applicable Documents and Forms

- a. Privacy Act of 1974, as amended, 5 U.S.C. § 552a.
- b. Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq.
- c. Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 3000ff et seq.
- d. Federal Sector Equal Employment Opportunity, 29 CFR Part 1614.
- e. Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended, 29 CFR Part 1630.
- f. Regulations under the Genetic Information Nondiscrimination Act of 2008, 29 CFR Part 1635.
- g. Privacy Act-NASA Regulations, 14 CFR Part 1212.
- h. NPR 1441.1, NASA Records Retention Schedules.
- i. NF 1534, Privacy Act Cover Sheet.
- j. NF1699, Confirmation of Request For Reasonable Accommodation.
- k. NF 1699A, Disposition of Reasonable Accommodation Request.

## **P.5 Measurement/Verification**

a. Compliance with the requirements of this NPR will be verified by:

(1) ODEO shall prepare a reasonable accommodations report annually no later than October 31, to be utilized in NASA's equal employment opportunity (EEO) strategic planning, for example, development of the Model EEO Agency Plan.

(2) The report will contain information regarding requests for reasonable accommodation, presented in the aggregate, as detailed in Chapter 5, Section 5.2.

## **P.6 Cancellation**

NPR 3713.1A, Reasonable Accommodations Procedures, dated March 28, 2008.

# Chapter 1. Policy and Process Overview

## 1.1 NASA Policy

1.1.1 NASA is both required and committed to providing reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability (employees or applicants), unless to do so would cause undue hardship to the Agency.

1.1.2 A reasonable accommodation is any change in the work environment to assist a qualified individual with a disability to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment. <sup>3</sup> Definitions of this and other key terms associated with the reasonable accommodations process are located in Appendix A.

1.1.3 Once an employee makes a request and provides the requested documentation, the supervisor and the employee requesting the accommodation shall engage in an interactive process in which ongoing communication is essential to providing an effective accommodation.

1.1.4 NASA may choose among reasonable accommodations, as long as the chosen accommodation is effective and does not impose an undue hardship on the Agency.

1.1.5 NASA will process requests for reasonable accommodation and, where appropriate, provide an effective reasonable accommodation in a prompt manner.

1.1.6 These requirements cover applicants for employment and employees in part-time and full-time positions. <sup>4</sup>

1.1.7 This policy also applies to persons hired under disability specific hiring authorities.

## 1.2 A General Overview of the Process

1.2.1 Individuals make a request for reasonable accommodation to their immediate supervisor or the Center Disability Program Manager (DPM) and provide supporting documentation, if requested. <sup>5</sup> The immediate supervisor is responsible for deciding whether to grant or deny a reasonable accommodation request. (See Sections 3.1 - Section 3.3.)

1.2.2 As part of the process, the supervisor and the employee will engage in an interactive discussion (interactive process) to discuss the employee's limitations and the need for accommodation. This discussion is designed to allow the supervisor to determine whether or not an accommodation is reasonable and, if so, what would be the most effective accommodation for the employee that does not impose an undue hardship on the Agency. (See Section 3.2.2.)

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<sup>3</sup> For requests relating to benefits and privileges of employment beyond supervisory control, such as use of fitness centers, employees should direct their requests to the Center Disability Program Manager for processing (see also Sec. 2.5.3).

<sup>4</sup> NASA has obligations to ensure facilities and program accessibility to non-employees in some circumstances. These obligations are addressed in other Agency policy (see, NPD/NPR 2081.1).

<sup>5</sup> For purposes of this NPR, the term "Center DPM" is inclusive of the DPM for NASA Headquarters.

1.2.3 During the interactive process, the supervisor may consult with the Center DPM within the EO Office and other subject matter experts (SMEs) who form the Center's "Reasonable Accommodations Team," which includes, but is not limited to, NASA physicians, Center DPMs, representatives from Human Resources (HR), Office of the General Counsel/Center Office of the Chief Counsel, Information Technology (IT), and Facilities. (See Section 2.8.)

1.2.4 The accommodation, if approved, will be provided within 30 calendar days of the date the request was made, unless there are extenuating circumstances. (See Section 3.2.1.2; Appendix C, Section C.3.)

1.2.5 If the accommodation is denied, employees may request reconsideration from the first-level supervisor and/or contact an EEO counselor to be advised of their rights. Note: Employees may contact an EEO counselor at any time to be advised of their rights. (See Sections 3.5 - 3.6.)

1.2.6 If the request for reconsideration is denied, employees may appeal the denial to the next-level supervisor and/or contact an EEO counselor to be advised of their rights. Note: Employees may contact an EEO counselor at any time to be advised of their rights. (See Sections 3.5 - 3.6.)

## Chapter 2. Roles and Responsibilities

### 2.1 Employees

2.1.1 Employees requesting reasonable accommodation are responsible for:

a. Notifying their supervisor or Center DPM orally or in writing of any disability or medical condition that may interfere with the performance of the essential functions of their job.

(1) An oral request will start the reasonable accommodation process.

(2) For record-keeping purposes, reasonable accommodation requests are recorded using NASA Form (NF) 1699. <sup>6</sup> Employees may complete NF 1699 or seek assistance from the DPM or their supervisor. (See Appendix F.)

(3) If the employee does not complete NF 1699, the employee is responsible for promptly reviewing the NF 1699 and signing it, acknowledging that the form properly reflects the requested accommodation. <sup>7</sup>

b. Participating in an interactive process (see Section 3.2.2) with their supervisor regarding functional limitations and the need for an accommodation. Employee responsibilities in the interactive process include:

(1) Suggesting reasonable accommodation possibilities that can be explored;

(2) Cooperating with management efforts to identify effective accommodations and/or alternate placements, if necessary; and

(3) Promptly providing requested supporting medical documentation on the physical and/or mental impairment to be accommodated and how it relates to the essential functions of the position. <sup>8</sup> Employees should understand that, if the Agency asks for documentation, their requests for reasonable accommodation will not be processed until they provide the supporting documentation. (See Sections 3.2.7 and 3.3.)

2.1.2 Employees should understand that under Federal law they are not entitled to the accommodation of their choice. They are entitled to an effective accommodation that does not impose an undue hardship on the Agency.

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<sup>6</sup> It is the Agency's preference that requests for reasonable accommodation are made by the employee in writing, using NF 1699 (See Section 3.1.6).

<sup>7</sup> All reference to NASA Forms or NFs refers to the forms or their electronic equivalents.

<sup>8</sup> Employees or their representatives should let their supervisor know of any potential delays in providing adequate medical documentation.

### 2.2 Job Applicants

2.2.1 If job applicants need a reasonable accommodation during the application or hiring process, they should inform the Human Resources Specialist (HRS) who is handling the Vacancy Announcement under which they are applying. An example would be a request for sign language interpretation.

2.2.2 In general, job applicants who request a reasonable accommodation for the application process should participate in an interactive discussion with the HRS, similar to that between a NASA employee and supervisor (See Sections 2.1.1(b) and 3.2.2.)

### 2.3 Supervisors/Decision Makers <sup>9</sup>

2.3.1 First-level supervisors are responsible for deciding whether to grant or deny employee requests for reasonable accommodation in most circumstances. <sup>10</sup>

2.3.2 When employees raise the reasonable accommodation request directly with their supervisor and do not make the request in writing, the supervisor is responsible for documenting the reasonable accommodation request. The supervisor is responsible for transferring the request details to NF 1699 as soon as possible but no later than five calendar days from the date the request was received and promptly providing copies of the NF 1699 to the Center DPM and employee requesting the accommodation.

2.3.3 Supervisors should consult with the "Reasonable Accommodations Team" throughout this process. (See Sec. 2.8.)

2.3.4 Supervisors shall engage in the interactive process with employees to discuss the employee's limitations and the need for accommodation. This discussion is designed to allow the supervisor to determine whether or not an accommodation is reasonable and, if so, what would be the most effective accommodation for the employee that does not impose an undue hardship on the Agency. (See Sections 1.2.2, 1.2.3 and Section 3.2.2.)

2.3.5 Supervisors shall promptly notify the employee in writing of their final decision whether to grant or deny the

accommodation. 11

2.3.5.1 Where an accommodation is granted, the supervisor shall notify the employee in writing of when and how the accommodation will be provided.

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<sup>9</sup> For the sake of continuity, decision makers shall be referred to as "supervisors" throughout this document.

<sup>10</sup> For requests relating to benefits and privileges of employment beyond supervisory control, such as use of fitness centers, employees should direct their requests to the Center Disability Program Manager for processing (see also Sec. 2.5.3).

<sup>11</sup> The Agency is only required to accommodate the known physical or mental limitations of a qualified individual with a disability, unless the Agency can show an undue hardship. Employees must show a nexus between their disability and the need for an accommodation.

2.3.5.2 Where an accommodation is denied, the supervisor shall notify the employee in writing and provide the employee with reconsideration and appeal rights and/or the right to seek EEO counseling. Note: Employees have the right to contact an EEO counselor at any time to be advised of their rights.

2.3.6 Supervisors shall consider requests for reconsideration, including any additional information provided, and issue decisions on such requests within 10 calendar days of the request for reconsideration.

2.3.7 Supervisor Initiates in Limited Circumstances

2.3.7.1 Supervisors should initiate the reasonable accommodation interactive process on their own initiative without being asked if the supervisor:

- a. Knows that the employee has a disability;
- b. Knows, or has reason to know, that the employee is experiencing workplace problems because of the disability; and
- c. Knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation.

2.3.7.2 If the individual with a disability states that he or she does not need a reasonable accommodation, NASA will have fulfilled its obligation. <sup>12</sup>

## 2.4 Associate Administrator for Diversity and Equal Opportunity

2.4.1 The Associate Administrator (AA), ODEO, is responsible for ensuring the effective functioning of the reasonable accommodations policy and procedures, including the development and coordination of information dissemination and training on reasonable accommodations for managers, supervisors, and employees.

## 2.5 Disability Program Managers

2.5.1 The HQ or Center DPMs, who normally reside within the HQ and Center EO Offices, are responsible for coordinating, tracking, and providing advice on the reasonable accommodation process at the Center level.

2.5.2 The DPM:

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<sup>12</sup> See EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship, Q&A No. 40.

- a. Receives and maintains requests for reasonable accommodations from employees and supervisors; and
- b. Notifies supervisors immediately when employees request reasonable accommodation directly to the DPM.

2.5.3 The DPM will process requests relating to benefits and privileges of employment beyond supervisory control, such as use of fitness centers, and employees should direct their requests to the Center DPM for processing. (See Appendix A for a definition of "benefits and privileges of employment.")

2.5.4 When necessary, the DPM will request and receive medical documentation in support of the reasonable accommodation request, safeguard the documentation, and forward it to the NASA physician for medical evaluation. (See Section 3.3.1.3.)

2.5.5 The DPM will convene the "Reasonable Accommodations Team" (comprised of SMEs), as deemed appropriate. (See Section 1.2.3.)

2.5.6 The DPM is responsible for entering information related to all requests for reasonable accommodation and case disposition into the NASA electronic tracking system. (See Section 5.2 for specific information on the data to be maintained.)

2.5.7 The DPM shall safeguard the privacy of reasonable accommodation records at all times. (See Section 3.3.4.)

## 2.6 Human Resources Specialists (HRS)

2.6.1 In the case of a job applicant making a request for reasonable accommodation, the HRS processing the vacancy shall be responsible for processing the request for reasonable accommodation and making the decision whether or not to grant the request.

2.6.2 The HRS shall ensure that all vacancy announcements include the following statement in accordance with the Office of Personnel Management (OPM) guidelines: "Applicants with a disability who need a reasonable accommodation for any part of the application or hiring process should notify the Office of Human Capital or Human Resources. The decision on granting reasonable accommodations will be made on a case-by-case basis."

2.6.3 The HRS shall begin the interactive process with persons offered employment under Schedule A, or other disability specific hiring authority, inquiring as to whether the employee requires a reasonable accommodation, prior to reporting to duty.

2.6.4 The HRS shall notify the Center DPM regarding each request for reasonable accommodation made by a job applicant and consult appropriately.

2.6.5 In employee requests for reasonable accommodation, the HRS shall assist supervisors and other members of Reasonable Accommodation Teams in the reasonable accommodation process, as needed.

## 2.7 NASA Physicians

2.7.1 The NASA physician at each respective Center or a Federal Occupational Health (FOH) consultant<sup>13</sup> shall consult with NASA supervisors and Reasonable Accommodations Teams on a case-by-case basis regarding the need to obtain medical information. (See Section 3.3.1.1.)

2.7.2 In cases in which a review of medical documentation is determined appropriate, the NASA physician shall review the medical documentation to:

- a. Determine whether the medical documentation is sufficient for the Agency to decide whether the individual has a disability; and
- b. Provide detailed information on the employee's functional limitations to assist the supervisor in identifying what types of accommodation(s) would be reasonable and effective. (See Section 3.3.3.3.)

## 2.8 Reasonable Accommodations Team

2.8.1 This is a team of subject matter experts, including but not limited to, NASA physicians, Center DPMs (normally EO Office officials), representatives from HR, Office of the General Counsel/Center Office of the Chief Counsel, IT, and Facilities.

2.8.2 When convened by the DPM to discuss reasonable accommodation requests, members of this team advise the supervisor in helping make the decision on whether to grant or deny the request.

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<sup>13</sup> The term "NASA physician" refers to physicians employed by NASA or the Federal Occupational Health (FOH) service or working as contractors with NASA or FOH.

## Chapter 3. The Reasonable Accommodations Process

### 3.1 Initiating the Request

3.1.1 Employees may request a reasonable accommodation from their immediate supervisor or the Center DPM.

3.1.2 A job applicant may request a reasonable accommodation from the appropriate HRS.

3.1.3 The request may be made orally or in writing. A request for reasonable accommodation does not have to contain any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." A supervisor, manager, or the DPM should ask individuals whether they are requesting a reasonable accommodation if the nature of the initial communication is unclear but the employee links the request or need for an accommodation to a medical condition.

3.1.4 An individual with a disability may request a reasonable accommodation at any time, even if the existence of a disability has not been previously disclosed.

3.1.5 A family member, friend, health professional, or other representative may also request a reasonable accommodation on behalf of a NASA employee or applicant, subject to verification by the employee, when able. The request shall be submitted to the employee's supervisor or DPM.

3.1.6 Employees are not required to initiate the request in writing. However, it is the Agency's preference that employees submit NF1699 whenever possible. (See Sec. 2.1.1 and Appendix F.)

3.1.7 If an employee or job applicant does not make the request on NF 1699, the immediate supervisor, HRS, or DPM, shall transfer the information to NF 1699 as soon as possible but no later than five calendar days from the date the request is received and request that the employee promptly review the completed form and sign it, acknowledging that it accurately represents the employee's request.

3.1.8 For reasonable accommodations needed on a repeated basis (e.g., the assistance of sign language interpreters or readers), the NF 1699 should only be completed for the initial request and should clarify that the accommodation is needed on a continuing basis.

### 3.2 Processing the Request

3.2.1 Timeframes. NASA shall process requests for reasonable accommodation and provide reasonable accommodations as expeditiously as possible.

3.2.1.1 NASA's goal is that these requests be processed and, if granted, provided within 30 calendar days. However, the Agency recognizes that requests that need medical documentation or involve other extenuating circumstances will take longer (see Appendix C, Section C.3)

3.2.1.2 If extenuating circumstances exist, every effort should be made to ensure prompt processing, such that processing time does not extend beyond 60 calendar days. In such cases, the Center DPM should inform the Agency DPM of the delay for tracking purposes. (See Appendix C, Section C.3.)

3.2.2 The Interactive Process. The supervisor and the employee requesting the accommodation, as well as the Center DPM, as needed, shall engage in an interactive discussion, or process, to determine what, if any, accommodation should or can be provided. This happens after the receipt by the DPM of any requested medical documentation. This means that the individual requesting the accommodation and the supervisor will communicate, preferably by discussing the request, the potential accommodations, and how the requested accommodation will enable the requester to perform the essential functions of the job. (See also Section 3.2.4.)

#### 3.2.3 Initial Supervisory Steps

3.2.3.1 Within two calendar days of receipt of the request, the supervisor shall acknowledge the request in writing and respond to the requestor by explaining that he or she will be the deciding official on the request.

3.2.3.2 Within five calendar days of receipt of the request, the supervisor shall complete an NF 1699 that will be provided to the requestor for signature if the request is made in an alternate format. (See Section 3.1.7.)

3.2.3.3 Within five calendar days of receipt of the request, the supervisor shall have an initial discussion with the employee and/or their representative to discuss the processing of the request, and the DPM will notify the employee of medical or supporting needed in order to process the request.

3.2.4 Communication as Priority. Communication is essential throughout the entire process. This means that the applicant or employee requesting the accommodation should also participate, to the extent possible, in helping to identify effective accommodations that are related to the interview and/or the essential functions of the job. Resources available to help both the deciding official and the individual requesting the accommodation are listed in

Appendix E. As part of the interactive process, the supervisor (or HRS) and the employee (or applicant) requesting the reasonable accommodation shall communicate to ensure a full exchange of relevant information.

3.2.5 Third Party Requests. Prior to proceeding, the supervisor should, if practicable, confirm that the individual with the disability does, in fact, want a reasonable accommodation. For example, it may not be practicable to confirm the request if the individual has been hospitalized with an acute condition. <sup>14</sup> In this situation, the supervisor will process the third party's request to the extent possible and consult directly with the individual needing the accommodation as soon as it is practicable.

3.2.6 Case-by-Case Basis. Every reasonable accommodation is provided on a case-by-case basis. Where the disability, the need for accommodation, and the type of accommodation to be provided are clear, extensive discussions may not be necessary. The accommodation that suits one individual may be unsuitable for another individual with the same disability.

3.2.7 Cases in which Medical Documentation is Needed. In more complex cases, such as those cases in which a disability and/or the need for reasonable accommodation are not obvious or otherwise known to the supervisor, the supervisor should seek additional information or clarification from the individual requesting the accommodation, as well as the aforementioned Reasonable Accommodations Team. (See Section 3.3.)

3.2.7.1 Such cases may be ones in which the specific limitations, problems, or barriers are unclear; where there is more than one disability; where an effective accommodation is not obvious; or where the parties are identifying different possible reasonable accommodations.

3.2.7.2 In such cases, the supervisor, through the DPM, may require relevant medical documentation from the individual regarding the disability and any functional limitations which are related to the essential functions of the job. (See Section 3.3.)

3.2.7.3 The 30 calendar day time requirement for processing requests for reasonable accommodations will be on hold until adequate medical documentation is received.

3.2.8 Expedited Processing. In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a timeframe that is shorter than 30 calendar days. (See Appendix A, "Expedited Processing" definition.)

3.2.9 Temporary Measures. If there is a delay in providing a reasonable accommodation which has been approved, the supervisor shall determine whether temporary measures can be taken to assist the employee. (See Section 3.2.1.2 and Appendix C, Section C.4.)

### 3.2.10 Non-Responsiveness

3.2.10.1 To the extent that the Agency fails to respond at all to a request for reasonable accommodation within the prescribed timeframes (see Section 3.2.1), this may constitute a "denial" of reasonable accommodation. In such cases, employees may appeal this "denial" to their second-level supervisor. (See Section 3.6, regarding appeals of denials of reasonable accommodation.)

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<sup>14</sup> The employee should still be able to perform the essential functions of the job. 29 CFR § 1630.2(n).

3.2.10.2 To the extent that an employee who has requested a reasonable accommodation becomes non-responsive during the process, that is, does not respond to requests for requested documentation after repeated attempts or otherwise fails to continue the interactive discussion, absent extenuating circumstances, the Center DPM should make reasonable efforts to contact the employee and determine the reasons for the employee's non-responsiveness (see Section C.3.). If the employee remains non-responsive 60 calendar days after the original request, the supervisor shall administratively close the case by completing the NF 1699A, filling in the item pertaining to the reasons for the closure, and providing a copy of the NF 1699A to the employee. <sup>15</sup>

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<sup>15</sup> If the request is administratively closed for non-responsiveness, the non-responsive employee is not subsequently precluded from making a new reasonable accommodation request.

3.2.11 Confidentiality. The supervisor or any other NASA official who receives information in connection with a request for reasonable accommodation may share information connected with that request with only those Agency officials with a need to know the information. The supervisor should notify the Center DPM to obtain guidance to ensure that the proper confidentiality procedures have been followed. (See also Section 3.3.4.)

## 3.3 Processing Where Medical Information Is Required

### 3.3.1 Requesting and Obtaining Medical Information

3.3.1.1 The supervisor, in consultation with the Reasonable Accommodations Team, as appropriate, may determine

that it is necessary to obtain medical information for the Agency to determine whether the requesting individual has a disability and/or to identify the requesting individual's functional limitations. consistent with rules of construction set forth under 42 U.S.C. § 12101 et seq. and 29 CFR Part 1630. (See Appendix A, "Reasonable Accommodation Team" and "Substantially Limits" definitions.)

3.3.1.2 In cases where medical documentation is necessary, the DPM shall:

- a. Make such request in writing to the requesting individual as soon as possible after receipt of the request for reasonable accommodation.
- b. The written request should describe the nature of the job and the essential functions the individual is expected to perform. It should also include a copy of the individual's position description, any other relevant information about his job duties, and a limited medical release. (See Sections 3.3.1.4(b), C.5.)
- c. The types of medical documentation that may be requested in connection with a request for reasonable accommodation include:
  - (1) The diagnosis;
  - (2) The nature of the limitations imposed by the individual's impairment, for example, the condition, manner, duration, or severity of the individual's impairment; <sup>16</sup>

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<sup>16</sup> See 29 CFR § 1630.2(j)(4)(ii), stating: "Consideration of facts such as condition, manner, or duration may include, among other things, consideration of the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function."

- (3) The activity or activities limited by the impairment; and
- (4) The reason(s) supporting the request for reasonable accommodation or the particular reasonable accommodation requested, specifically, how the reasonable accommodation would assist the individual in the position, or position applied for, to perform the essential functions of the job, or to enjoy a benefit of the workplace. <sup>17</sup>

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<sup>17</sup> See EEOC Policy Guidance on Executive Order 13164, Questions 17-18.

- d. Explain to the individual requesting the reasonable accommodation that the failure to timely provide medical information or documentation or to cooperate with NASA's efforts to obtain such documentation may result in a delay in processing the request for reasonable accommodation and ultimately may result in a denial of the requested reasonable accommodation.
- e. Ensure consistency with requirements under the Genetic Information Nondiscrimination Act (GINA) of 2008, 42 U.S.C. § 3000ff et seq., such that all requests for medical information warn the employee and/or health care provider from whom the information is requested not to provide genetic information including family medical history. <sup>18</sup> (See Section C.6.)

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<sup>18</sup> 29 CFR § 1635.8(b)(1)(i)(A)-(D).

- f. Ensure that the individual knows all records pertaining to the request for reasonable accommodation are protected by the Privacy Act. (See Section 3.3.3.4.)

3.3.1.3 The DPM shall safeguard the medical documentation and forward the medical documentation to the NASA physician responsible for review. (See Section 3.3.3.)

3.3.1.4 If the medical documentation provided by the individual is insufficient, as determined by the NASA physician, to allow the supervisor (upon appropriate consultation) to make an informed decision about whether to grant or deny the request, the supervisor may ask, through the DPM, for supplemental documentation. The following applies to requests for supplemental documentation:

- a. The DPM shall request this information in writing, explaining to the individual seeking the reasonable accommodation, in specific terms, why the information which has been provided is insufficient or incomplete, what additional information is needed, and why it is necessary for a determination on the reasonable accommodation request.
- b. The DPM may ask the individual to sign a limited release authorizing a NASA physician to contact her or his health care provider directly and/or submit a list of specific questions to the individual's health care professional if not already done so at the initial request.
- c. If the medical documentation provided by the requester does not result in sufficient information, NASA may

require the requester to go to a health care provider of NASA's choice at NASA's expense. 19 Consideration should be given to providing the employee interim or partial reasonable accommodations during the time the additional documentation is being obtained.

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<sup>19</sup> See EEOC: Practical Advice, "Drafting Tips: Address how and when to obtain review by the agency's own medical expert." 17-18.

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d. The DPM may consult with HR or other members of the Reasonable Accommodations Team, as appropriate.

### 3.3.2 Timeframes Related to Medical Information

3.3.2.1 If there is a request for medical documentation, the time period for making the decision on whether to grant or deny the request will be suspended until sufficient documentation is received. Supervisors shall document this fact on NF 1699A.

3.3.2.2 After the DPM receives the medical information provided by the employee or his or her physician, the NASA physician shall promptly review and evaluate the medical documentation. Once the review is completed, the physician should notify the DPM as soon as possible.

3.3.2.3 The time period for processing the reasonable accommodation request will resume as soon as the DPM notifies the supervisor that the documentation is sufficient.

3.3.2.4 The supervisor shall make a determination on the request for reasonable accommodation in writing as soon as possible, but not later than 30 calendar days or 60 calendar days (in extenuating circumstances). This does not include any time on hold due to the request and review of medical documentation.

### 3.3.3 Evaluating Medical Documentation

3.3.3.1 Once the requisite medical documentation is received by the DPM, a NASA physician shall evaluate it.

3.3.3.2 The evaluation will be conducted at NASA's expense.

3.3.3.3 The NASA physician shall review the medical documentation to:

- a. Determine if it is sufficient for the Agency to decide whether the individual has a disabling medical condition; and
- b. Provide detailed information on the employee's medical limitations to assist the supervisor in identifying what types of accommodation(s) would be reasonable and effective.

3.3.3.4 In general, it is not necessary for the physician to inform the supervisor of the specific medical condition, including diagnosis, but supervisors do need to know the individual's functional limitations. Medical diagnoses are considered private and confidential and will be disclosed to the supervisor only with the employee's approval.

3.3.3.5 NASA physicians should make the assessment of whether sufficient medical documentation has been provided.

### 3.3.4 Confidentiality of Medical Information

3.3.4.1 All medical information obtained in connection with the reasonable accommodation process will be kept confidential and only shared on a need-to-know basis.

a. Accordingly, all medical information, including information about functional limitations that NASA obtains in connection with a request for reasonable accommodation, will be securely kept in files separate from the individual's personnel file.

b. All appropriate steps should be taken to ensure consistency in accordance with requirements under 42 U.S.C. § 2000ff et seq. and 29 CFR Part 1635. (See Appendix C, Sections C.5.3 and C.8.)

c. Any authorized NASA employee who obtains or receives such information is subject to the restrictions and requirements under 5 U.S.C. § 552a.

3.3.4.2 Individuals and organizations to which information may be disclosed can include, but are not limited to:

- a. Supervisors and managers who need to know about necessary restrictions on the work or duties of the employee's position or the position for which the applicant has applied, and about the reasonable accommodation(s).
- b. Emergency Preparedness, First Aid and Occupational Health and Safety personnel, if the disability may require emergency treatment or assistance with building evacuation during emergencies.
- c. Federal Government officials who need the information to determine the Agency's compliance with applicable law.
- d. NASA contractors with a need to know, such as physicians working under contract for the Agency who are not Agency officials.

3.3.4.3 Whenever medical information is disclosed, the individual disclosing the information shall inform the recipients of the information that they are strictly bound by the requirements of 5 U.S.C. § 552a.

3.3.4.4 All documents protected under 5 U.S.C. § 552a will have a NF 1534, Privacy Act Cover Sheet, and contain the statement, "Privacy Act Warning Document" on the top of the document or outside the document package.

3.3.4.5 All electronic transmissions regarding a reasonable accommodation request will be encrypted, in conformance with NASA policy.

## **3.4 Granting the Reasonable Accommodation Request**

3.4.1 Upon determining that a reasonable accommodation will be provided, the supervisor shall immediately communicate the decision orally, and subsequently in writing, using NF 1699A (see Appendix F), to the individual with a disability within five calendar days of approval.

3.4.2 Where the supervisor does not grant a specific requested reasonable accommodation, but offers to make a different one in its place, the NF 1699A will contain an explanation of both the reasons for not granting the specific reasonable accommodation requested and the reasons that the supervisor believes that the chosen reasonable accommodation is an effective alternative.

3.4.3 Funding to support the provision of reasonable accommodation is a Center/Installation determination, made consistent with requirements in this NPR.

3.4.4 Reasonable accommodations that can be requested include, but are not limited to, the following:

- a. Making existing facilities accessible.
- b. Restructuring the job. <sup>20</sup>
- c. Utilizing part-time or modified work schedules.
- d. Adjusting or modifying tests, training materials, or policies.
- e. Providing qualified readers and interpreters.
- f. Acquiring or modifying equipment, technology, or furniture.
- g. As a last resort, reassigning an individual to a vacant position for which the employee is qualified.

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<sup>20</sup> NASA is under no obligation to eliminate essential job functions of an employee's position or provide the employee with a new supervisor.

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3.4.5 Reassignments. A reassignment will only be considered if no reasonable accommodations are effective to enable the employee to perform the essential functions of the current job, or if the only effective reasonable accommodation would cause undue hardship to the Agency, as determined by management.

3.4.5.1 If an alternative reasonable accommodation is not available, NASA shall attempt to reassign the employee to a vacant position for which the employee is qualified, and the reassignment would not cause an undue hardship. Consideration of a reassignment is only available to current NASA employees.

3.4.5.2 A reassignment can be granted as a reasonable accommodation to a qualified probationary and career employee and may be made to a vacant position outside the employee's commuting area if the employee is willing to relocate.

3.4.5.3 It is within the Agency's discretion to pay for the employee's relocation costs if the position is outside the commuting area.

3.4.5.4 A qualified employee with a disability requesting reasonable accommodation may be offered a reassignment as a reasonable accommodation to a position for which a vacancy announcement has been published, as long as a selection to fill the position has not been made.

3.4.5.5 In considering whether there are positions available for reassignment, the supervisor shall coordinate with the Headquarters or Center Office of Human Capital Management (OHCM) or HR, and the individual requesting the reasonable accommodation to identify:

- a. All vacant positions within the Center (and, if the employee wishes, Agency wide) for which the employee is qualified, with or without reasonable accommodation; and
- b. All positions that OHCM has reason to believe will become vacant over the next 90 calendar days and for which the employee is qualified.

3.4.5.6 The supervisor and Center or HQ OHCM shall initially focus on positions that are equivalent to the

employee's current job in terms of pay, status, and other relevant factors.

3.4.5.7 If there is no vacant equivalent position, the supervisor and Center or HQ OHCM shall consider vacant lower-level positions for which the individual is qualified.

### **3.5. Denying the Request for Reasonable Accommodation**

3.5.1 Reasons for the denial of a request for reasonable accommodation may include, but are not limited to, the following:

- a. It is determined, based on the interactive process and in consultation with relevant subject matter experts, for example, the Reasonable Accommodations Team, the requested reasonable accommodation would not be reasonable and/or effective. <sup>21</sup>
- b. Providing the requested accommodation would result in undue hardship to the Agency.
- c. Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
- d. The requested accommodation would require the elimination of an essential function of the position.
- e. The requested accommodation would require the lowering of a performance standard (e.g., safety, quality, reliability, etc.).
- f. The requested accommodation would pose a direct threat to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation (see also Appendix A, "Direct Threat" definition).

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<sup>21</sup> EEOC Policy Guidance on Executive Order 13164, Section B (Processing Requests for Reasonable Accommodation), Questions 10-11.

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3.5.2 Before denying the request, the supervisor shall confer with appropriate subject matter experts to determine whether other effective reasonable accommodations exist which would not impose an undue hardship and, therefore, can be provided.

3.5.3 When evaluating budgetary or administrative concerns to determine if undue hardship exists, NASA shall follow the regulatory standards in 29 CFR § 1630.2(p)(2).

3.5.4 If the supervisor denies the reasonable accommodation request, he or she will promptly communicate this decision to the requester and complete NF 1699A. The supervisor shall also provide a copy of the written denial to the individual who made the request and to the DPM.

- a. In cases where an alternate format is appropriate, the information in NF 1699A will be provided in the relevant format.
- b. The explanation for the denial will be written in plain language, clearly stating the specific reasons for the denial, for example, why the reasonable accommodation would not be effective or why it would result in undue hardship.

#### **3.5.5 Notification of Denial**

3.5.5.1 With notification of denial, the supervisor shall inform individuals of their right to:

- a. Engage in informal dispute resolution, including the right to request for reconsideration and appeal to the next-level supervisor (see Section 3.6); and
- b. Contact the EEO Office at the respective NASA Center within 45 days of receipt of the written notice of denial, in accordance with 29 CFR § 1614.105(a)(1).

3.5.5.2 If an employee elects to seek reconsideration and appeal of the denial, the 45-day time period to contact the EEO Office is suspended until the final disposition of the request.

### **3.6 Reconsiderations and Appeals**

3.6.1 Within 10 calendar days, individuals may request reconsideration of a denial of reasonable accommodation to their first-level supervisor. Additional information may be presented to support this request.

3.6.2 The first-level supervisor shall make a determination on the request for reconsideration and notify the employee in writing within 10 calendar days of receiving the request, absent extenuating circumstances. (See Appendix A, "Extenuating Circumstances" definition; see also Section C.3.)

3.6.3 If the request for reconsideration is denied, employees may appeal the denial within 10 calendar days of receipt of denial to their second-level supervisor. Additional information may be provided to the second-level supervisor in support of the appeal.

3.6.4 The second-level supervisor shall make a determination on the appeal and notify the employee in writing within 10 calendar days of receiving the request, absent extenuating circumstances.

3.6.5 Individuals have the right to contact an EEO Counselor at any stage of the process. With regard to timeliness, an individual must contact the respective NASA Center EEO Office within 45 days of receipt of written notice of a decision, in accordance with 29 CFR § 1614.105(a)(1).<sup>22</sup>

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<sup>22</sup> See also Section 3.2.10(a) for situations in which a supervisor is non-responsive.

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## **Chapter 4. Statutory and Collective Bargaining Claims**

### **4.1 Relationship with Statutory and Collective Bargaining Protections**

This NPR is in addition to statutory and collective bargaining protections for individuals with disabilities qualified to perform the essential functions of a job, with or without reasonable accommodation, and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.

### **4.2 Statutory Anti-Discrimination Remedies**

Individuals who choose to pursue statutory anti-discrimination remedies for denial of a request for reasonable accommodation must contact an EEO counselor at their respective installation within 45 days from the date of receipt of the written notice of denial or denial of appeal. <sup>23</sup> (See 29 CFR § 1614.105(a)(1).)

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<sup>23</sup> See also Section 3.2.10(a) for situations in which a supervisor is non-responsive.

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### **4.3 EO Supervisory Recusals**

NASA EO Directors or designees shall recuse themselves from the processing of their employees' informal and/or formal EEO complaints on the same reasonable accommodation matter that the EO Directors or designees decided.

## Chapter 5. Records Maintenance and Reporting

### 5.1 Records Maintenance

5.1.1 The NASA Center's EO Director/Officer, through the DPM, shall maintain custody of all records obtained or created during the processing of a request for reasonable accommodation with the exception of medical records (see Section 5.1.2) and Agency attorney work products (maintained by the Office of the General Counsel or the Center Office of the Chief Counsel).

5.1.2 After a decision has been rendered on the request, the DPM shall forward all medical information to the Occupational Health Unit Medical Records (OHUMR) facility for records maintenance.

5.1.3 Medical records will be maintained by the OHUMR facility.

5.1.4 All records will be securely maintained in accordance with 5 U.S.C. § 552a and the requirements of 14 CFR Part 1212.

5.1.5 Records will be retained and disposed in compliance with NASA Records Retention Schedules (see also Section 5.3 ).

### 5.2 Reasonable Accommodation Reporting

5.2.1 Centers, through their DPMs, shall maintain records in the Reasonable Accommodations Management System for every request for reasonable accommodation provided to the DPM.

5.2.2 ODEO shall prepare an annual report no later than October 31, containing the following information, presented in the aggregate:

5.2.1.1 The number of reasonable accommodations, by job type, that have been requested in the application process and whether those requests have been granted or denied.

5.2.1.2 The number of reasonable accommodations, by job type, requested by employees.

5.2.1.3 The number of reasonable accommodations approved, by job type, and the number of reasonable accommodations, by job type, that have been denied.

5.2.1.4 The number of requests that required medical information and when provided by the requester.

5.2.1.5 Reasons for denial of requests identified in Section 5.2.1.3.

5.2.1.6 Number and type of reasonable accommodations requested related to benefits or privileges of employment.

5.2.1.7 Amount of time (in calendar days) taken to process requests, including the time it takes for the employee to provide the requested information.

5.2.1.8 Sources of technical assistance consulted.

5.2.1.9 Numbers of new managers and supervisors trained.

5.2.3 In addition, the report will provide a qualitative assessment of the reasonable accommodation program, including any recommendations for improvement of NASA's reasonable accommodation policies and procedures to be utilized in NASA EEO strategic planning, such as the Model EEO Plan. Qualitative assessment may include analysis and recommendations based on such factors as:

5.2.3.1 Focus groups of individuals who have participated in the process, to learn more about their experiences with and perceptions of the process.

5.2.3.2 Responses to relevant questions on the EO Functional Review Customer Satisfaction Survey and the Diversity and Inclusion Assessment Survey.

5.2.3.3 Course evaluations of reasonable accommodation training.

5.2.3.4 Reporting of analytics (e.g., number of page views) for online technical assistance and training tools relating to the provision of reasonable accommodations.

### 5.3 Conformity with NASA Records Management Policy

ODEO personnel, Center EO Offices, and the Center OHUMR facilities shall maintain and safeguard all records and documents following the requirements provided in NPR 1441.1. This includes proposing changes to current retention schedules and developing new retention schedules when necessary.



## **Chapter 6. Dissemination, Education and Inquiries**

### **6.1 Dissemination**

6.1.1 These procedures are available to all employees and applicants upon issuance by electronic posting in the NASA Online Directives Information System (NODIS).

6.1.2 They will also be posted on the Agency and Centers' Equal Opportunity Web sites and/or included in employee handbooks.

6.1.3 They will also be distributed to all new employees as part of orientation on the first day of work.

6.1.4 These procedures will be provided in alternative formats, including simplified format, when requested by, or on behalf of, any NASA employee.

### **6.2 Education and Awareness**

6.2.1 NASA managers and supervisors shall be required to participate in training on the provision of reasonable accommodations within 90 days of being appointed to a supervisory role.

6.2.2 All NASA employees, including managers and supervisors, are strongly encouraged to participate in reasonable accommodations training on an ongoing basis.

### **6.3 Inquiries**

6.3.1 Any person wanting further information concerning these procedures may contact the Center DPM. They may also contact the Agency DPM at NASA Headquarters in Washington, DC, at (202) 358-2167 or TTY (202) 358-1062.

6.3.2 Additional information regarding reasonable accommodation matters can also be obtained by accessing the U.S. EEOC's website, [www.eeoc.gov](http://www.eeoc.gov). As of the date this NPR became effective, the URL is <http://www.eeoc.gov/policy/docs/accommodation.html>.

## Appendix A. Definitions

### Benefits and Privileges of Employment

These include, but are not limited to, employer-sponsored: (1) training; (2) services, e.g., employee assistance programs (EAPs), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation); and (3) parties or other social functions, e.g., parties to celebrate retirements, birthdays, and company outings. 24

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<sup>24</sup> U.S. EEOC, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Oct. 17, 2002), "Reasonable Accommodation Related to the Benefits and Privileges of Employment," accessible at [http://www.eeoc.gov/policy/docs/accommodation.html#N\\_17](http://www.eeoc.gov/policy/docs/accommodation.html#N_17) (hereafter cited as EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship).

### Direct Threat

Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a direct threat is based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment is based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm. 25

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<sup>25</sup> 29 CFR § 1630.2(r).

### Disability Program Manager (DPM)

Normally, the DPM is a member of the Agency's ODEO or Center EO Office staff whose responsibilities include administering the Special Emphasis Program (SEP) for individuals with disabilities. In some cases, the duties of a DPM may be performed on a collateral duty basis by a person permanently assigned to an operational component other than the HQ or Center EO Offices.

### Essential Functions

Essential functions are those job duties that are so fundamental to the position that the individual holding or desiring the position cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function, there are a limited number of other employees who could perform the function if it were assigned to them, or if the function is specialized and the individual is hired based on the individual's ability to perform it. 26

The supervisor, in consultation with HR, determines the essential functions of a position. Determination of the essential functions of a position will be made on a case-by-case basis so that the current duties of the position reflect the job as actually performed, and not simply the components of a generic position description. The determination is to be made based on NASA's judgment as to which functions are essential, a written job description prepared before the job was advertised or interviews conducted, and other considerations as appropriate, to include: the actual work experience of present or past employees in the job, the time spent performing a function, the consequences of not requiring that an employee perform a function, and the terms of a collective bargaining agreement.

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<sup>26</sup> EEOC Policy Guidance, § I(A).

### Expedited Processing

In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a timeframe that is shorter than 30 calendar days. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in five calendar days due to the timetable for processing a vacancy (e.g., conducting interviews and making hiring decisions). An example, in the context of an applicant, might be that there may be a need to expedite a request for reasonable accommodation to ensure that the applicant has an equal opportunity to apply for a job. Therefore, the HRS responsible for the particular vacancy must make a decision as quickly as possible and, if appropriate, provide a reasonable accommodation.

### Extenuating Circumstances

Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for reasonable accommodation. The term covers those limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of a reasonable accommodation. (See also Section C.3.)

**Individual with Disability**

With respect to an individual, disability means:

- a. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- b. A record of such an impairment; or
- c. Being regarded as having such an impairment. This means that the individual has been subjected to a prohibited action, because of an actual or perceived impairment that is not both "transitory and minor." <sup>27</sup> (See also, definition of "substantially limits.")

NASA is required to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the 'actual disability' prong, or 'record of' prongs, but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the 'regarded as' prong. <sup>28</sup>

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<sup>27</sup> 29 CFR § 1630.2(g)(iii).

<sup>28</sup> 29 CFR § 1630.9(e).

**Major Life Activities**

Major life activities include, but are not limited to:

- a. Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and
- b. The operation of a major bodily function, including functions of the immune system, special sensory organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system. <sup>29</sup>

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<sup>29</sup> 29 CFR § 1630.2(h)(2)(ii).

**Mitigating Measures**

The non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity. Mitigating measures include, but are not limited to:

- a. Medication, medical supplies, equipment, or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;
- b. Use of assistive technology;
- c. Reasonable accommodations or 'auxiliary aids or services' (as defined by 42 U.S.C. § 12101 et seq.);
- d. Learned behavioral or adaptive neurological modifications; or
- e. Psychotherapy, behavioral therapy, or physical therapy.

**Physical or Mental Impairment**

A physical impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sensory organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. <sup>30</sup>

A mental impairment is any mental or psychological disorder, such as an intellectual disability (formerly "mental retardation"), organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities. <sup>31</sup>

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<sup>30</sup> 29 CFR § 1630.2(j)(4)-(5).

<sup>31</sup> 29 CFR § 1630.2(h)(2).

**Qualified**

The term 'qualified,' with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. <sup>32</sup>

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<sup>32</sup> 29 CFR § 1630.2(m).

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### **Reasonable Accommodation**

A reasonable accommodation is any change in the work environment to assist a person with a disability to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment. <sup>33</sup> There are three categories of reasonable accommodations:

- a. Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (such as providing application forms in alternative formats like large print or Braille).
- b. Modifications or adjustments necessary to enable an individual with a disability to perform the essential functions of the job (such as providing sign language interpreters).
- c. Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment (such as removing physical barriers in an office or common area such as a cafeteria). <sup>34</sup>

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<sup>33</sup> EEOC Enforcement Guidance), "General Principles: Reasonable Accommodation," citing 29 CFR pt. 1630 app. § 1630.2(o).

<sup>34</sup> EEOC Enforcement Guidance, "General Principles: Reasonable Accommodation;" see also U.S. Office of Personnel Management, Federal Employment of People with Disabilities, HR Professionals and Reasonable Accommodation, accessible at [http://www.opm.gov/disability/hrpro\\_6-01-C.asp](http://www.opm.gov/disability/hrpro_6-01-C.asp) (hereafter cited as OPM Guidance).

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### **Reasonable Accommodations Team**

This is a team of subject matter experts, including but not limited to, NASA physicians, Center DPMs, and representatives from HR, Office of the General Counsel/Center Office of the Chief Counsel, IT, and Facilities. When convened by the DPM to discuss reasonable accommodation requests, members of this team advise the supervisor in helping make the decision on whether to grant or deny the request.

### **Reassignment**

Reassignment is the placement of an employee in a vacant position without competition at the same grade and potential currently held for which the employee is qualified. If a position of an equal grade is not available, an employee may voluntarily accept a change to a lower grade and to a vacant position for which the employee is qualified.

Before considering reassignment as a reasonable accommodation, the Agency will first consider those reasonable accommodations that would enable employees to remain in the current position. Reassignment is an accommodation of last resort and is required only after it has been determined that:

- a. There are no effective reasonable accommodations that enable employees to perform the essential functions of their current position; or
- b. All other reasonable accommodations would impose an undue hardship.
- c. If both the Agency and the employee voluntarily agree that reassignment is preferable to remaining in the current position with some form of reasonable accommodation, then the employer may reassign the employee. <sup>35</sup>

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<sup>35</sup> EEOC Enforcement Guidance: "Types of Reasonable Accommodation Related to Job Performance: Reassignment."

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### **Substantially Limits**

In order for a physical or mental impairment to be a "disability" under 42 U.S.C. § 12101 et seq., as amended, the impairment has to "substantially limit" a major life activity. The term "substantially limits" is construed broadly, utilizing nine rules of construction that are applied in determining whether an impairment substantially limits (or substantially limited) a major life activity. <sup>36</sup> These are:

- a. The term 'substantially limits' is construed broadly in favor of expansive coverage, to the maximum extent permitted by law. 'Substantially limits' is not meant to be a demanding standard.
- b. An impairment is a disability within the meaning of the law if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of the law.

- c. The threshold issue of whether an impairment 'substantially limits' a major life activity should not demand extensive analysis.
- d. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term 'substantially limits' is interpreted and applied to require a degree of functional limitation that is lower than the standard for 'substantially limits' applied by the Supreme Court prior to the 2008 amendments to 42 U.S.C. § 12101 et seq.
- e. The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis. [This] is not intended, however, to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate.
- f. The determination of whether an impairment substantially limits a major life activity is made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses are considered in determining whether an impairment substantially limits a major life activity.
- g. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- h. An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment.
- i. The six-month 'transitory' part of the 'transitory and minor' exception to 'regarded as' coverage does not apply to the definition of 'disability' under . . . the 'actual disability' prong . . . or the 'record of' prong of [the regulations]. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of the regulations. 37

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<sup>36</sup> 29 CFR § 1630.2(j)(1)(i)-(ix).

<sup>37</sup> 29 CFR § 1630.2(j)(1)(ix).

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## Supervisor

For purposes of this NPR, the person who determines whether a request for reasonable accommodation is granted is referred to as "the supervisor." In the case of an employee, the supervisor, in most cases, will be the employee's immediate supervisor. In the case of an applicant, it will be the Human Resources Specialist (HRS) who has been assigned to process the vacancy, in conjunction with the selecting official. There may be cases in which the appropriate deciding official is neither the immediate supervisor nor the HRS. In cases where the employee's immediate supervisor or the HRS processing the vacancy is not available to receive and process a request for reasonable accommodation, the next person in the supervisory chain will act as the supervisor.

## Undue Hardship

A significant difficulty or expense focused on the resources and circumstances of the Agency in relationship to the cost or difficulty of providing a specific reasonable accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive or those that would fundamentally alter the nature or operation of the calendar.

The Agency will assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship. <sup>38</sup> In making the determination as to "significant difficulty or expense" the Agency will consider:

- a. Overall size of the Agency's program with respect to the number of employees, number and type of facilities, and size of budget.
- b. Type of operation, including the composition and structure of the Agency's workforce.
- c. Nature and cost of the reasonable accommodation.

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<sup>38</sup> EEOC Enforcement Guidance, Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, "General Principles: Undue Hardship," Oct. 17, 2002

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## Appendix B. Acronyms

AA	Associate Administrator
CAP	Computer/Electronics Accommodations
DPM	Disability Program Manager
EO	Equal Opportunity
EEO	Equal Employment Opportunity
FOH	Federal Occupational Health
GINA	Genetic Information Nondiscrimination Act
HR	Human Resources
HRS	Human Resources Specialist
IT	Information Technology
NF	NASA Form
HQ	NASA Headquarters
NODIS	NASA Online Directives Information System
OHUMR	Occupational Health Unit Medical Records
ODEO	Office of Diversity and Equal Opportunity
OHCM	Office of Human Capital Management
OPM	Office of Personnel Management
RAMS	Reasonable Accommodation Tracking System
SEP	Special Emphasis Program
SMEs	Subject Matter Experts

**Appendix C. Implementation Guide****C.1 Introduction**

- C.1.1 This Implementation Guide provides supporting information on the Agency procedures for processing reasonable accommodation requests to assist in ensuring appropriate and effective reasonable accommodation processing pursuant to the NPR.
- C.1.2 The guide is designed as an educational tool and desk-reference for managers, supervisors, and employees, especially individuals with formal roles and responsibilities in the process, for example, Center DPMs.
- C.1.3 To this end, the Guide provides additional, more detailed information on topics addressed or touched on in the body of the NPR, including:
- Common Types of Accommodations
  - Extenuating Circumstances
  - Temporary Measures
  - Parameters on Medical Information Requests
  - Standard Language for GINA Warnings
- C.1.4 This Implementation Guide also provides a flowchart of the process. (See Section C.9.)

**C.2 Common Types of Accommodations. These may include:**

- Modifying work schedules or supervisory methods
- Granting breaks or authorizing leave
- Altering how or when job duties are performed
- Removing and/or substituting a non-essential job function
- Moving to different office space
- Providing telework beyond that provided by a specific collective bargaining agreement or relevant Memorandum of Understanding.
- Making changes in workplace policies
- Providing adaptive or assistive technology, including information technology and communications equipment or specially designed furniture
- Providing a reader, sign language interpreter, or other staff assistant to enable employees to perform their job functions
- Removing an architectural barrier, including reconfiguring work spaces
- Providing accessible parking
- Providing materials in alternative formats (e.g., Braille, large print)
- Providing a reassignment to another job (see Section 3.4.5)

**C.3 "Extenuating Circumstances" to Time Frames**

- C.3.1 If a request for a reasonable accommodation requires no supporting medical information and no extenuating circumstances apply, the request is processed and the reasonable accommodation provided in no more than 30 calendar days from the date that the request was first made.
- C.3.2 Where extenuating circumstances are present, the supervisor notifies the individual in writing and apprises appropriate stakeholders (e.g., management, EO, HR, DPM) of the reason for the delay and the approximate date on which a decision or the provision of the reasonable accommodation, is expected.
- C.3.3 "Extenuating circumstances" covers limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of a reasonable accommodation.
- C.3.3.1 For example, NASA may not delay processing or providing a reasonable accommodation because a particular staff member is unavailable. NASA staff is expected to act as quickly as possible, but not take longer than 30 calendar days to process requests and provide reasonable accommodations, absent extenuating circumstances. Even with extenuating circumstances, every effort should be made to ensure prompt processing, such that processing time does not extend beyond 60 calendar days.
- C.3.3.2 When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the reasonable accommodation is extended, as necessary, at the discretion of the supervisor with the following rules applying:
- Extensions based on extenuating circumstances are limited.
  - The reasons for such extensions will be in writing.
  - The supervisor's response, regardless of whether the extension is granted, will also be documented.
- C.3.3.3 Some examples of extenuating circumstances:
- There is an outstanding initial or follow-up request for medical information, or the physician or other health professional chosen by NASA is evaluating medical information that has been provided.
  - The purchase of equipment may take longer than 30 calendar days because of requirements under the Federal Acquisition Regulations.
  - Equipment has to be back-ordered because the vendor typically used by NASA for goods or services has unexpectedly gone out of business or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
  - The employee with a disability needs to work with equipment on a trial basis to ensure that it is effective before NASA executes a final purchase.
  - New staff needs to be hired or contracted for, or a reasonable accommodation involves the removal of architectural barriers.
  - The acquisition of assistive technology may take time to obtain.
- C.3.4 Any further developments or changes are also to be communicated promptly by the supervisor to the individual in writing, including other extenuating circumstances that would modify or limit the Agency's ability to provide the reasonable accommodation.

**C.4 Temporary Measures**

- C.4.1 If there is a delay in providing a reasonable accommodation that has been approved, the supervisor, in consultation with the Reasonable Accommodations Team, determines whether temporary measures can be taken to assist the employee. (Note: Generally, this section refers to employees rather than applicants.)
- C.4.2 This could include providing the requested reasonable accommodation on a temporary basis or providing a less effective form of reasonable accommodation.
- C.4.2.1 This temporary measure may not be as effective as the adaptive equipment, but it will at least allow the employee to perform as much of the job as possible until the equipment arrives.
- C.4.2.2 In addition, the supervisor may provide, although is not required to provide, measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if:
- They do not interfere with the operations of the Agency; and
  - The employee is clearly informed that they are being provided only on a temporary, interim basis.
- C.4.2.3 If a delay is attributable to the need to obtain or evaluate medical documentation and NASA has not yet determined that the individual is entitled to a reasonable accommodation, NASA may also provide temporary measures.
- In such a case, the supervisor is to notify the individual in writing that the measures are temporary, pending a decision on the reasonable accommodation request.
  - Supervisors who approve such temporary measures are responsible for assuring that they do not take the place of a permanent reasonable accommodation and that all necessary steps to secure the permanent reasonable accommodation are taken.

**C.5 Parameters on Medical Information Requests**

- C.5.1 The supervisor, with appropriate consultation and through the DPM, may seek information or documentation only about the disability and/or functional limitations and/or ask the individual to obtain such information from an appropriate professional, such as a treating or attending physician, psychiatrist, nurse, rehabilitation therapist, or counselor.
- C.5.1.1 More specifically, NASA may only seek the documentation that is reasonably necessary to establish that the individual requesting the reasonable accommodation has a disability and needs the reasonable accommodation requested. <sup>39</sup>

<sup>39</sup> See EEOC: Practical Advice For Drafting And Implementing Reasonable Accommodation Procedures Under Executive Order 13164 (July 2005), "Drafting Tips: Expressly warn against asking for medical information in support of every accommodation request." (hereafter cited as EEOC: Practical Advice).

- C.5.1.2 Therefore, the medical documentation will be limited to determining the existence of a disability and/or the functional limitations that require reasonable accommodation.
- C.5.1.3 To obtain the most helpful information possible, all requests for medical information to the individual requesting the accommodation or to the individual's medical provider should describe the nature of the job, the essential functions the individual is expected to perform, and include a copy of the individual's position description and any other relevant information about job duties.

**C.6 Standard Language for GINA Warnings**

- C.6.1 As stated in Section 3.3.1.2(c), all requests for medical information should warn the employee and/or health care provider from whom the information is requested not to provide genetic information, to ensure consistency with GINA. This would include any information related to family medical history, genetically-related disorders or diseases, or other information on genetic tests or services.
- C.6.2 The warning should be in writing and should state as follows:

"The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services." <sup>40</sup>

<sup>40</sup> 29 CFR § 1635.8(b)(1)(i).

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Flowchart of the Reasonable Accommodation Process for Employees

## Appendix D. References

- D.1 The National Aeronautics and Space Act, 51 U.S.C. § 30113(a).
- D.2 Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4214, Section 403.
- D.3 E.O. No. 12106, 3 CFR 263 (1978 Comp.).
- D.4 Medical Qualifications Determinations, 5 CFR Part 339.
- D.5 NPR 1840.1, Management of Workers' Compensation Injuries and Illnesses.
- D.6 NPR 1382.1, NASA Privacy Procedural Requirements.
- D.7 EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (2000).
- D.8 EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (1999; rev. 2002).
- D.9 EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (2000).
- D.10 EEOC Management Directive (MD) 715 (2003).
- D.11 EEOC Office of Federal Operations, Practical Advice for Drafting and Implementing Reasonable Accommodation Procedures Under Executive Order 13164 (2005).

## Appendix E. Resources

### Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TTY)

<http://askjan.org> A service of the U.S. Department of Labor, Office of Disability Employment Policy (ODEP) formerly the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

### Americans with Disabilities Act (ADA) Disability and Calendar Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TTY)

The DBTACs consist of ten federally funded regional centers that provide information, training, and technical assistance on the Americans with Disabilities Act of 1990. Each Center works with local businesses, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

### Registry of Interpreters for the Deaf

(703) 838-0030 (Voice/TTY)

The registry offers information on locating and using interpreters and transliteration services.

### Rehabilitation Engineering and Assistive Technology Society of North America (RESNA) Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TTY)

<http://www.resna.org/>

RESNA can refer individuals to projects throughout the United States offering technical assistance on technology-related services for individuals with disabilities. Services may include: information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products), centers where individuals can try out devices and equipment, assistance in obtaining funding for and repairing devices, and equipment exchange and recycling programs.

### Selected Equal Employment Opportunity Commission Resources

#### ***Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act***

<http://www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol4/pdf/CFR-2011-title29-vol4-part1630.pdf>

#### ***Notice Concerning The Americans With Disabilities Act (ADA) Amendments Act of 2008***

[http://www.eeoc.gov/laws/statutes/adaaa\\_notice.cfm](http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm)

#### ***Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008***

[http://www.eeoc.gov/laws/regulations/ada\\_qa\\_final\\_rule.cfm](http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm)

#### ***Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA***

[http://www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm)

#### ***Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation***

[http://www.eeoc.gov/policy/docs/accommodation\\_procedures.html](http://www.eeoc.gov/policy/docs/accommodation_procedures.html)

#### ***Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA (as revised, 10/17/02)***

<http://www.eeoc.gov/policy/docs/accommodation.html>

#### ***Enforcement Guidance: Disability-Related Inquiries & Medical Examinations of Employees Under the ADA***

<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>

***Policy Guidance on Executive Order 13145: To Prohibit Discrimination in Federal Employment Based on Genetic Information***

<http://www.eeoc.gov/policy/docs/guidance-genetic.html>

***Enforcement Guidance on Application of the ADA to the Contingent Workers Placed By Temporary Agencies & Other Staffing Firms***

<http://www.eeoc.gov/policy/docs/guidance-contingent.html>

***Enforcement Guidance on the ADA and Psychiatric Disabilities***

<http://www.eeoc.gov/policy/docs/psych.html>

***Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person is a "Qualified Individual with a Disability" Under the ADA***

<http://www.eeoc.gov/policy/docs/qidreps.html>

***Enforcement Guidance: Workers' Compensation & the ADA***

<http://www.eeoc.gov/policy/docs/workcomp.html>

***Enforcement Guidance: Preemployment Disability-Related Questions & Medical Examinations***

<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>

***Interim Enforcement Guidance on the Application of the ADA to Disability-Based Distinctions in Employer Provided Health Insurance***

<http://www.eeoc.gov/policy/docs/health.html>

***FMLA, ADA, and Title VII***

<http://www.eeoc.gov/policy/docs/fmlaada.html>

***Q&A: Intellectual Disabilities in the Workplace & the ADA***

[http://www.eeoc.gov/laws/types/intellectual\\_disabilities.cfm](http://www.eeoc.gov/laws/types/intellectual_disabilities.cfm)

***Q&A: Epilepsy in the Workplace & the ADA***

<http://www.eeoc.gov/laws/types/epilepsy.cfm>

***Q&A: Diabetes in the Workplace & the ADA***

<http://www.eeoc.gov/laws/types/diabetes.cfm>

***Job Applicants and the ADA***

<http://www.eeoc.gov/facts/jobapplicant.html>

***Work at Home/Telework as a Reasonable Accommodation***

<http://www.eeoc.gov/facts/telework.html>

***The ADA: A Primer for Small Business***

<http://www.eeoc.gov/eeoc/publications/adahandbook.cfm>

***Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures***

<http://www.eeoc.gov/facts/evacuation.html>

***How to Comply with the ADA: A Guide for Restaurants & Other Food Service Employers***

[http://www.eeoc.gov/facts/restaurant\\_guide.html](http://www.eeoc.gov/facts/restaurant_guide.html)

***Q&A for Parties to Mediation: Mediation and the ADA***

<http://www.eeoc.gov/eeoc/mediation/ada-parties.cfm> â??

## **Appendix F. Forms**

[Click here to retrieve NASA Form 1699](#)

[Click here to retrieve NASA Form 1699A](#)

[Click here to retrieve NASA Form 1699B](#)

[Sample Medical Request Memo to Employee](#)